Australian Government

Australian Taxation Office

Legislative Instrument

A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Supply or Acquisition Made Under a Contract Subject to Preconditions) Determination 2012

I, James O'Halloran, Deputy Commissioner of Taxation, make this legislative instrument under subsection 29-25(1) of the *A New Tax System (Goods and Services Tax) Act 1999* (the GST Act). I make the following legislative instrument, being satisfied under paragraph 29-25(2)(f) of the GST Act that it is necessary to prevent the provisions of Division 29 and Chapter 4 applying in a way that is inappropriate in circumstances involving a supply made under a contract that is subject to preconditions.

James O'Halloran
Deputy Commissioner of Taxation

Dated: 12 April 2012

1. Name of instrument

This legislative instrument is the *A New Tax System (Goods and Services Tax) (Particular Attribution Rules Where Supply or Acquisition Made Under a Contract Subject To Preconditions) Determination 2012.*

2. Commencement

This legislative instrument commences on 24 August 2011.

3. Application

This legislative instrument applies to a ***deferred transfer farm-out arrangement*** if the arrangement is entered into after the commencement date of this legislative instrument and the deferred transfer farm-out arrangement is an arrangement to which Miscellaneous Tax Ruling MT 2012/2: Miscellaneous taxes: application of the income tax and GST laws to deferred transfer farm-out arrangements applies.

4. Legislative Instrument (Who is covered by this legislative instrument)

This legislative instrument applies if:

(a) a ***farmor*** and a ***farmee*** have entered into an agreement for a deferred transfer farm-out arrangement; and

(b) under the agreement, the transfer of a percentage interest in the mining tenement from the farmor to the farmee is to occur only after the farmee has:

(i) satisfied, within the required time, the exploration expenditure commitments to earn that percentage interest; and

(ii) exercised a right to acquire the interest in the mining tenement; and

(c) under the agreement, meeting at least some (if not all) of the exploration expenditure commitments to earn that percentage interest in the mining tenement is at the discretion of the farmee; and

(d) there is a provision of an ***exploration benefit*** by the farmee to the farmor.

5. Attribution rules for a farmor

(a) If the farmor accounts for GST on a basis other than cash, GST payable on a taxable supply of an interest in the mining tenement is attributable to the tax period in which the farmee exercises the right to acquire the interest.

(b) If the farmor accounts for GST on a cash basis, GST payable on a taxable supply of an interest in the mining tenement is attributable to the tax period in which the interest is transferred to the extent that the consideration received for that supply is the exploration benefit.

Note: if the consideration received is cash, the basic attribution rules apply.

(c) The tax period determined under paragraph (a) or (b) applies instead of the tax period determined under subsection 29-5(1) or (2) of the GST Act, respectively.

(d) To avoid any doubt the basic attribution rules under Division 29 of the GST Act otherwise apply to the farmor.

6. Attribution rules for a farmee

(a) If the farmee accounts for GST on a basis other than cash, the input tax credit for a creditable acquisition of an interest in the mining tenement is attributable to the tax period in which the farmee exercises the right to acquire that interest.

(b) If the farmee accounts for GST on a cash basis, the input tax credit for a creditable acquisition of an interest in the mining tenement is attributable to the tax period in which the farmee exercises the right to acquire that interest to the extent of any consideration provided in that tax period or an earlier tax period for that acquisition.

(c) The tax period determined under paragraph (a) or (b) applies instead of the tax period determined under subsection 29-10(1) or (2) of the GST Act, respectively.

(d) To avoid any doubt the basic attribution rules under Division 29 of the GST Act otherwise apply to the farmee.

7. For the purposes of this legislative instrument

(a) ***Deferred transfer farm-out arrangement*** means an arrangement where the transfer of the interest in the mining tenement from the farmor to the farmee occurs only if the farmee meets all of its exploration expenditure and payment (if any) commitments for the transfer of that interest and relevant Ministerial or other approvals are granted, and the arrangement is one to which MT 2012/2 applies.

(b) ***Exploration benefit*** means the benefit that flows to the farmor from the farmee's exploration expenditure commitments, which are treated as consideration (or part of the consideration) under MT 2012/2 for the supply by the farmor of an interest in the mining tenement.

(c) ***Farmor*** means the owner of an interest in a mining tenement who enters into a deferred transfer farm-out arrangement with the characteristics as set out in paragraph 13 of MT 2012/2.

(d) ***Farmee*** means the other party who enters into a deferred transfer farm-out arrangement with the characteristics as set out in paragraph 13 of MT 2012/2 and who undertakes exploration expenditure and payment (if any) commitments under that arrangement to earn an interest in the mining tenement.

(e) Other expressions in this legislative instrument have the same meaning as in the GST Act.